

The Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LVB-OGDEN MARKETING, LLC,

Plaintiff,

v.

DAVID S. BINGHAM, SHARON  
BINGHAM, CHRISTOPHER  
BINGHAM, CHERISH BINGHAM,  
KELLY BINGHAM, BINGO  
INVESTMENTS, LLC, CCRB  
ENTERPRISES, LLC, PARK PLACE  
MOTORS, LTD., HYTECH POWER,  
INC., CICILIA ELALI (f/k/a CICILIA  
PARK), HENRY DEAN, in his  
individual capacity and as Trustee for the  
SHARON GRAHAM BINGHAM 2007  
TRUST, and BGH HOLDINGS, LLC,

Defendants.

NO. 2:18-cv-00243-TSZ

SUPPLEMENTAL BRIEF OF  
DAVID S. BINGHAM, SHARON  
BINGHAM, CHRISTOPHER  
BINGHAM, CHERISH BINGHAM,  
KELLY BINGHAM, BINGO  
INVESTMENTS, LLC, SKBB  
ENTERPRISES, LLC, AND CCRB  
ENTERPRISES, LLC

SUPPLEMENTAL BRIEF OF BINGHAMS,  
SKBB, AND CCRB - 1

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1 Defendants David S. Bingham, Sharon Bingham, Christopher Bingham,  
2 Cherish Bingham, Kelly Bingham, Bingo Investments, LLC, (collectively, the  
3 “Judgment Debtors”) and SKBB Enterprises, LLC and CCRB Enterprises, LLC  
4 (collectively, the “Family LLCs,” and with Judgment Debtors, the “Bingham  
5 Entities”) respectfully submit the following analysis as directed by the Court in its  
6 minute order dated August 17, 2018 (ECF No. 132).  
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8  
9 ***Issue 1***

10 The Bingham Entities adopt and incorporate the analysis and argument set  
11 forth in the brief filed concurrently by the Sharon Graham Bingham 2007  
12 Trust/Henry Dean in his capacity as Trustee of the Sharon Graham Bingham 2007  
13 Trust (the “SGB 2007 Trust”).  
14

15  
16 ***Issue 2***

17 “Whether Plaintiff needs an order from this Court before it can execute on  
18 the assets of Defendant CCRB Enterprises, LLC, SKBB Enterprises, LLC, or any  
19 other assets outside of the Trust.”  
20

21 Obviously, Plaintiff (“LVB”) cannot execute in **this** action, because no  
22 judgment has entered against any Defendant in this action. The Bingham Entities  
23 therefore understand the Court to be asking whether LVB needs to wait for  
24 judgment in this action, before it can pursue execution in the underlying action,  
25

1 *LVB-Ogden Marketing Corp. v. McCourt, et al.*, Cause No. 09-cv-04518 in the  
2 District Court for the Northern District of Illinois, particularly on assets held by the  
3 Family LLCs which LVB claims are in some sense really owned by the Judgment  
4 Debtors.  
5

6 LVB need not wait on the Court in this action, to execute on its judgment in  
7 general. For example, if there were a bank account in the name of, for example,  
8 Bingo Investments, LLC, LVB could presumably begin garnishment and that  
9 Judgment Debtor or the garnishee could make appropriate objections.  
10

11 LVB has brought in this action, however, claims that raise the exact same  
12 issues which would clearly arise in certain specific execution scenarios,  
13 specifically as to the O.D. Fisher Trust and the Nellie Hughes Fisher Trust (the  
14 “Fisher Trusts”) and as to the Family LLCs. In the interests of judicial efficiency  
15 and to avoid incongruous results in different actions, those issues should be decided  
16 in only one action.  
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19 First, LVB has asked this Court to enter a declaration that “[t]he assets of  
20 the O.D. Fisher Trust and Nellie Hughes Fisher Trust shall be transferred to LVB  
21 to satisfy the judgment, as they became property of judgment debtor Sharon G.  
22 Bingham upon the death of Frances G. Bingham [sic].” First Amended Complaint  
23 ¶ 118(g) (ECF No. 82). Despite having already raised that issue in this Court, LVB  
24  
25

1 separately served a writ of garnishment on Bank of the West and accused it of  
2 withholding responsive information related to assets held by those trusts at that  
3 bank, on exactly the same legal theory. *See* Cause No. 2:18-cv-00786-TSZ in this  
4 Court. If the Court determines in that action that LVB cannot execute on assets  
5 still in the Fisher Trusts, that decision would be res judicata as to LVB's  
6 "declaratory" claim in this action. The effect of that parallel action, thus, is to  
7 bifurcate this action. That actually seems more efficient with regard to the Fisher  
8 Trusts issue, because LVB has not tied its allegations about the Fisher Trusts into  
9 its conspiracy theory about the Defendants here. LVB should dismiss its claim in  
10 this action as to the Fisher Trusts and resolve it in the garnishment action.  
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14 With regard to the Family LLCs, however, the issues that would arise in  
15 execution are inextricably intertwined with those already being actively litigated  
16 in this action. LVB concedes in its declaratory-judgment claim pleading that there  
17 is a controversy which requires adjudication, as to whether it may execute on assets  
18 held under the name of the Family LLCs. First Amended Complaint ¶ 117 (ECF  
19 No. 80). Pursuing execution separately would raise the same issues in a second  
20 action. Unlike the Fisher Trusts issues, those issues should not be separately  
21 litigated. The whole premise of LVB's claims against the Family LLCs is that the  
22 Family LLCs' very creation, and all of their acts, were part of the alleged complex  
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1 fraudulent scheme supposedly perpetrated by all the Defendants. *Id.*, *passim*. The  
2 Bingham Entities disagree, and look forward to putting these theories to the proof,  
3  
4 but the point is, those issues should be resolved in this action before any other court  
5 rules on them.

6       The ‘alter ego’ issues raised in LVB’s original Complaint are, the Court has  
7  
8 already ruled, beyond the Court’s ancillary jurisdiction. Those issues are no longer  
9 in this action and may have to be resolved elsewhere. But even if a court with  
10 jurisdiction were to rule in favor of LVB on that theory, execution would still have  
11 to wait on this Court’s resolution of other issues. Assuming, *arguendo*, that SKBB  
12 were an alter ego of Kelly Bingham, so that whatever assets it might have are  
13 actually Kelly Bingham’s, the Sharon Graham Bingham 2007 Trust still holds prior  
14 judgments and liens on her property—and therefore, *ex hypothesi*, on SKBB’s  
15 assets. In this action, LVB challenges the existence or effect of those prior  
16 judgments. Again, the Bingham Entities disagree with LVB on those points, but  
17 again, those issues would have to be resolved in this action before any assets of a  
18 hypothetical alter ego of a Judgment Debtor could be executed upon elsewhere.  
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22       ***Issue 3***  
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1 The Bingham Entities adopt and incorporate the analysis and argument set  
2 forth in the brief filed concurrently by Defendants Henry W. Dean and BGH  
3 Holdings, LLC, and add the following.  
4

5 Based on the authorities cited by the said defendants, whether to bifurcate a  
6 trial, is essentially a question of convenience and efficiency. Here, LVB proposes  
7 separating out into a first phase of the action, three claims, ostensibly for  
8 declaratory relief: as to execution on assets in the Fisher Trusts, as to execution on  
9 “self-settled assets” in the Sharon Graham Bingham 2007 Trust (the “SGB 2007  
10 Trust”), and as to the SGB 2007 Trust’s “spendthrift defense.” (ECF No. 127 at 5–  
11 6). The first of these claims, regarding the Fisher Trusts, seems reasonably separate  
12 from the rest of this action. LVB has not alleged any specific facts relating that  
13 claim to its other claims. LVB’s Fisher-Trusts claim could be efficiently bifurcated  
14 from the rest of this action. In practical effect, as discussed above, it already has  
15 been. Therefore, there is no practical need to bifurcate it again. It will be resolved  
16 in the pending garnishment action against Bank of the West. The better answer  
17 would be for LVB (or the Court) to dismiss that claim without prejudice in this  
18 action.  
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24 In contrast, LVB’s allegations about the other two claims which it proposes  
25 bifurcating off, are inextricably intertwined with the rest of this action. LVB

1 alleges a single, overarching scheme to hide assets from creditors, including the  
 2 supposed self-settled transfers, all relying on the SGB 2007 Trust's spendthrift  
 3 nature. The Defendants' defenses rely in part on the spendthrift protection afforded  
 4 by Washington law. Separating out that defense puts the cart before the horse:  
 5 LVB has to make a prima facie proof of its claims before any defense should be  
 6 proved. If LVB is going to have to make that prima facie proof at the Phase 1 trial  
 7 it envisions, there will be much redundancy between that trial, and the Phase 2 trial.  
 8 Bifurcation would therefore be very inefficient. Likewise, if the 'self-settled  
 9 transfers' issue is not resolved on the pending summary judgment motion it will be  
 10 more efficient, and easier on the witnesses, to bring out evidence about those  
 11 transfers in the course of the same trial at which evidence is presented about all the  
 12 other transfers.  
 13  
 14  
 15  
 16

17 DATED this 21st day of September, 2018.

18 **JOHNSTON JACOBOWITZ & ARNOLD, PC**

19 /s/ Emanuel Jacobowitz

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SUPPLEMENTAL BRIEF OF BINGHAMS,  
SKBB, AND CCRB - 8

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States that on September 21, 2018, I served a copy of the foregoing upon all parties of record through the Court's ECF system

DATED this 21st day of September, 2018.

/s/ Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA No. 39991